

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

DAX PIERSON,

Plaintiff,

v.

FORD MOTOR COMPANY,

Defendant.

No. C 06-6503 PJH

**ORDER DENYING DEFENDANT'S
MOTION FOR JUDGMENT AS A
MATTER OF LAW, AND DENYING
DEFENDANT'S MOTION FOR A NEW
TRIAL**

Defendant Ford Motor Company's Rule 50(b) motion for judgment as a matter of law and Rule 59 motion for a new trial came on for hearing before this court on October 21, 2009. Plaintiff appeared by his counsel Daniel Dell'Osso, Brian Malloy, James Doyle, and Kevin Quinn; and defendant appeared by its counsel Grant Law and Amir Nassihi. Having read the parties' papers and carefully considered their arguments, and good cause appearing, the court DENIES the motions as follows for the reasons stated at the hearing.

1. Motion for Judgment as a Matter of Law

A party must make a motion for judgment as a matter of law under Federal Rule of Civil Procedure 50(a) before a case is submitted to the jury. Judgment as a matter of law is appropriate when "a party has been fully heard on an issue during a jury trial and the court finds that a reasonable jury would not have a legally sufficient evidentiary basis to find for the party on that issue" Fed. R. Civ. P. 50(a)(1); see also Reeves v. Sanderson Plumbing Prods., Inc., 530 U.S. 133, 149 (2000).

If the judge denies or defers ruling on the motion, and if the jury then returns a verdict against the moving party, the party may renew its motion under Rule 50(b). Because it is a renewed motion, a proper post-verdict Rule 50(b) motion is limited to the grounds asserted in the pre-deliberation Rule 50(a) motion. A party cannot properly "raise

1 arguments in its post-trial motion for judgment as a matter of law under Rule 50(b) that it
2 did not raise in its preverdict Rule 50(a) motion.” Freund v. Nycomed Amersham, 347 F.3d
3 752, 761 (9th Cir. 2003) (citation omitted); see also Wallace v. City of San Diego, 479 F.3d
4 616, 631 (9th Cir. 2007). However, Rule 50(b) “may be satisfied by an ambiguous or
5 inartfully made motion” under Rule 50(a). Reeves v. Teuscher, 881 F.2d 1495, 1498 (9th
6 Cir. 1989).

7 The standard for judgment as a matter of law mirrors that for granting summary
8 judgment. Reeves, 530 U.S. at 150. “[I]n entertaining a motion for judgment as a matter of
9 law, the court . . . may not make credibility determinations or weigh the evidence.” Reeves,
10 530 U.S. at 150. Rather, the court “must view the evidence in the light most favorable to
11 the nonmoving party . . . and draw all reasonable inferences in that party's favor.” Josephs
12 v. Pac. Bell, 443 F.3d 1050, 1062 (9th Cir. 2006). Where there is sufficient conflicting
13 evidence, or if reasonable minds could differ over the verdict, judgment after the verdict is
14 improper. See, e.g., Kern v. Levolor Lorentzen, Inc., 899 F.2d 772, 775 (9th Cir. 1990).

15 The test applied is whether the evidence permits only one reasonable conclusion,
16 and that conclusion is contrary to the jury's verdict. Josephs, 443 F.3d at 1062. The
17 verdict must be upheld if the evidence is adequate to support the jury's conclusion, even if
18 it is also possible to draw a contrary conclusion from the same evidence. Johnson v.
19 Paradise Valley Unified Sch. Dist., 251 F.3d 1222, 1227 (9th Cir. 2001).

20 As stated at the hearing, the court finds that judgment as a matter of law is not
21 warranted, and that the evidence may permit more than one reasonable conclusion. Given
22 the amount of circumstantial evidence submitted, and viewing the evidence in the light most
23 favorable to the plaintiff, the court cannot say that the jury had no basis for its verdict.

24 2. Motion for a New Trial

25 The court may grant a motion for a new trial under Federal Rule of Civil Procedure
26 59 even if the verdict is supported by substantial evidence, if it concludes that the verdict is
27 contrary to the clear weight of the evidence, is based on evidence which is false, or would
28 result in a miscarriage of justice. See Silver Sage Partners Ltd. v. City of Desert Hot

1 Springs, 251 F.3d 814, 819 (9th Cir. 2001). Unlike for a motion for judgment as a matter of
2 law, the court may weigh the evidence, may evaluate the credibility of the witnesses and is
3 not required to view the evidence from the perspective most favorable to the prevailing
4 party. United States v. Kellington, 217 F.3d 1084, 1095 (9th Cir. 2000).

5 However, where a movant claims that a verdict is against the clear weight of the
6 evidence, doubts about the correctness of the verdict are not sufficient grounds for a new
7 trial. Landes Constr. Co., Inc. v. Royal Bank of Canada, 833 F.2d 1365, 1372 (9th Cir.
8 1987). "Courts are not free to reweigh the evidence and set aside the jury verdict merely
9 because the jury could have drawn different inferences or conclusions or because judges
10 feel that other results are more reasonable." Tennant v. Peoria & Pekin Union Ry., 321
11 U.S. 29, 35 (1944).

12 The trial court, after having given full respect to the jury's findings, must have a
13 definite and firm conviction that the jury has made a mistake. Landes Constr. Co., 833
14 F.2d at 1371-72 (citations omitted). Thus, the authority to grant a new trial "is confided
15 almost entirely to the exercise of discretion on the part of the trial court." Allied Chem.
16 Corp. v. Daiflon, Inc., 449 U.S. 33, 36 (1980) (per curiam).

17 In the Ninth Circuit, the district court's denial of the motion for a new trial is reversible
18 only if the record contains no evidence in support of the verdict. Molski v. M.J. Cable, Inc.,
19 481 F.3d 724, 729 (9th Cir. 2007). If there is no reasonable basis, "the absolute absence
20 of evidence to support the jury's verdict" makes refusal to grant a new trial an error in law.
21 Id. (citations omitted).

22 As stated at the hearing, the court finds no basis for a new trial. The court does not
23 conclude that the jury's verdict was absolutely unsupported by evidence.

24
25 **IT IS SO ORDERED.**

26 Dated: October 23, 2009



27 PHYLLIS J. HAMILTON
28 United States District Judge